IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2218 OF 2007

Allahabad Bank ....Petitioner
V/s.
Pushpak Bullion Pvt.Ltd. & Ors. ....Respondents

Mrs.Usha Srivastava i/b M/s.Consulta Juris for the Petitioner.

Mr.Rajiv Patil with Mr.Yogesh Yagnik for Respondent Nos.1 to 4.

CORAM : F.I. REBELLO &
R.M. SAVANT, JJ.
DATED : 10TH APRIL, 2007.

P.C. :

1. Rule. Heard forthwith.

2. Respondent Nos.1 to 4 herein, in the Original Application filed by the Petitioner herein, moved an application purporting to be under Section 9-A of the Code of Civil Procedure as amended in the State of Maharashtra. The learned D.R.T. by its order dated 15.10.2004 was pleased to dismiss the application. Aggrieved Respondent Nos.1 to 4 preferred an Appeal before D.R.A.T. The learned D.R.A.T. on 29.6.2006 was pleased to set aside the order of the D.R.T. and allowed the application filed by Respondent Nos.1 to 4 herein. It is this order

which is the subject matter of the present Petition.

3. At the hearing of this Petition, on behalf of the Petitioner the learned counsel submits that considering the documentary evidence relied upon by the Petitioner, it would not be open to the D.R.A.T. based on the pleadings to arrive at a conclusion that the Petitioner herein had failed to make out a cause of action against Respondent Nos.1 to 4. Our attention has been invited to various documents including the minutes of a purported meeting between the Petitioner on one hand and Mr.Ketan Shroff, Respondent No.2, purported representative of Respondent No.1 and other Respondents.

. On the other hand, on behalf of Respondent Nos.1 to 4, their learned counsel submits that it was within the jurisdiction of the learned Appellate Tribunal to have considered whether there was a misjoinder of causes of action in so far as the present Respondents are concerned and considering that the claim against the Respondents is less than Rs.50,000/-, no application would lie before the D.R.T. He therefore submitted that the order of the D.R.A.T. does not suffer from any jurisdictional error and consequently the order is liable to be set

aside.

4. We have heard the learned counsel for the parties. In the instant case we are concerned with the provisions of recovery of debts due to Bank and Financial Act, 1993. Section 9-A of is an amendment brought by the State of Maharashtra to the C.P.C., 1908. In other words, it is a State enactment. Prima-facie Section 9-A of C.P.C. would not apply to Central enactment. At any rate considering the provisions to C.P.C. and if there be no jurisdiction, the issue ought to be decided at the threshold. The issue can be examined in that context.

. The issue of jurisdiction would be in respect of the subject matter, pecuniary and territorial jurisdiction. In the instant case, we are not concerned with the territorial or jurisdiction as to subject matter. The entire case of Respondent Nos.1 to 4 was by their joinder on the ground that the claim against them is independent and has no connection with the reliefs sought against the other Respondents and at any rate the claim against them being less than Rs.50,000/- D.R.T. would not have jurisdiction. The matter therefore, can be looked in that context. One striking of the name of the Respondents on the ground

of misjoinder of causes of action and secondly they being independent parties, the jurisdiction of the D.R.T. When the issue of jurisdiction arises, it is open to the Court where no evidence is required to be led to proceed to answer the same based on the pleadings. In all other cases, the parties must be given an opportunity to lead their evidence oral and documentary. In the instant case, there is documentary evidence on which the Petitioners are rely. The issue whether those documents are fabricated, fraudulent or the Respondents do not admit the correctness or genuineness of the documents are all issue of fact which can only be considered when the parties are allowed to lead the evidence. In matters pertaining to jurisdiction which involves a mixed question of fact of law, a Court however should decide the issues with the other issues, or at any rate permit the parties to lead evidence. That was not done.

5. We may examine the issue from that context. The application filed by Respondent Nos.1 to 4 could not have been disposed of based on the pleadings, as in so far as the pecuniary jurisdiction is concerned that would depend on the evidence which the Petitioners are entitled to lead including documentary

evidence which they have relied upon. The entire case of the Petitioner herein is that Respondent No.2, who is the Director of Respondent No.1, has caused the other accounts to be opened and had agreed in the terms of the minutes which were recorded at a meeting held on 21.5.2002 to make good all the dues. The Petitioners have also relied on the subsequent correspondence of 4.6.2002, which was forwarded to Respondent No.2 based on the meeting which was held on 21.5.2002. There is also other correspondence. The learned D.R.A.T. did not give any opportunity to the Petitioners herein to prove the said documents. In our opinion the order of the D.R.A.T. suffers from an error of law apparent on the face and is liable to be set-aside.

6. Considering that the issue which arise even pertaining to the jurisdiction, being a mixed question of fact and law, which requires both oral evidence and proving of documents, in our opinion, this is a fit case to interfere in our extra-ordinary jurisdiction.

7. In the light of that, the order dated 29.6.2006 passed by the D.R.A.T. is set-aside. The order passed by the D.R.T. dated 15.10.2004 is restored. Parties are permitted to lead evidence

before D.R.T. on the issue of jurisdiction. It is for D.R.T. to decide whether it proposes to answer the issue of jurisdiction as a preliminary issue or along with other issues. Rule is accordingly made absolute, with no order as to costs.

8. The learned counsel for Respondent Nos.1 to 4 seeks stay of the order. In our opinion, no case is made out for granting any stay. The same is rejected.

(R.M. SAVANT, J.) (F.I. REBELLO, J.)